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ABSTRACT

The National Coalition for Literacy's (NCL's) stated goal is to serve as the national leadership organization of the adult literacy field. However, NCL's organizational structure severely limits its ability to muster the personnel resources or raise the money required to fully perform the leadership functions required of a national coalition. The following options for NCL's future were therefore reviewed: (1) disband NCL; (2) maintain the status quo; (3) make modest improvements to improve NCL's effectiveness; and (4) incorporate NCL as a tax-exempt organization with a professional staff and an adequate budget. The review process included the following activities: (1) interviews with 20 individuals, including 19 of NCL's 34 listed voting members; (2) interviews with individuals representing NCL's nonvoting members and others who could provide technical advice or external perspectives on NCL; and (3) a review of various documents related to NCL's charter, bylaws, financial situation, and public policy work. It was recommended that NCL become an incorporated, tax-exempt organization with a small professional staff provided NCL's leadership is willing to make the short-term commitment of time and resources required to complete the incorporation process. (The following items are appended: a list of evaluation study interviewees; a memorandum on incorporation and tax exemption; general information on lobbying; and a description of the law practice counseling the NCL.) (MN)

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The National Coalition for Literacy: Options for the Future

An Evaluation Report by
By Forrest P. Chisman
Vice President for Special Projects
Council for Advancement of Adult Literacy

September 30, 2002

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EXECUTIVE SUMMARY

The adult literacy field needs, and has long needed, a national leadership organization comparable to the national coalitions or associations that represent other important causes.

The stated goals of the National Coalition for Literacy (NCL) are to serve as such a leadership organization. But NCL's organizational structure severely limits its ability to perform the necessary leadership functions. As an unincorporated, largely volunteer organization, NCL cannot muster the personal resources to fully achieve its goals, nor can it raise the necessary funds to supplement its volunteer efforts. Although the very existence of NCL has symbolic value and its projects make a contribution to the advancement of literacy, most of those projects are conceived and operated on an ad hoc basis with inadequate resources and accountability. Taken as a whole, the organization's program falls short of its goals and of the leadership needs of the literacy field.

Most of the staff representing NCL's member organizations in its work are aware of these problems. They and the organizations they represent should consider four options for the future of NCL:

- Disband the organization;
- Maintain the status quo;
- Make modest improvements to improve effectiveness; or
- Incorporate NCL as a tax-exempt organization with a professional staff and an adequate budget, thereby placing it on a par with at least the smaller national leadership organizations in other fields.

There seems to be no reason to disband the organization. It makes positive contributions to the literacy field and certainly does no harm. The status quo is unsatisfactory to most members. The only reason to continue it is if members are unwilling to devote the time and resources to making a change. Modest improvements are possible, but they will take additional volunteer time and resources, and they will not solve NCL's major funding problems.

As a result, this report recommends that NCL should become an incorporated, tax-exempt organization with a small professional staff. This course of action is eminently feasible, although it will require a short-term commitment of time and resources on the part of NCL's leadership. Ultimately, the question of whether or not to pursue this course is a matter of will: Do NCL's members wish to take the time and trouble to establish a national leadership organization for the adult literacy field that can more fully achieve NCL's stated goals?

There is some urgency in reaching this decision. Watershed public policy issues affecting the future of the literacy field will be resolved in 2003, and chronic problems of the field continue to grow worse. Consequently, NCL's members should reach a decision on the organization's future and take the necessary actions to implement it as soon as possible.

I. INTRODUCTION & METHODOLOGY

In July 2002, the National Coalition for Literacy (NCL) contracted with the Council for Advancement of Adult Literacy (CAAL) to conduct an evaluation of NCL's present status and options for the future. The contract called for a study including personal interviews and a review of relevant documents, followed by a preliminary report at NCL's September 4 meeting and a final written report by the end of September, 2002. The study was carried out between mid-July and late August 2002. The verbal report was presented on schedule at the September 4 meeting. This document is the final written report.

Responsibility for the study and reports was assigned to Forrest P. Chisman, CAAL's Vice President for Special Projects. Between mid-July and late August, the following activities were performed:

- Interviews were conducted with 20 individuals including 19 of NCL's 34 listed voting members as of September 1, 2002. These included all members of the Executive Committee and representatives of other Committees or Taskforces. Representatives of some member organizations could not be reached within the available time frame, and efforts to reach representatives of inactive NCL members were unsuccessful. Most interviews were conducted by telephone and lasted for one hour or more. All interviews followed a standard protocol, although some diverged from that protocol when this seemed to be useful. All interviews were conducted under a promise of confidentiality. A list of all representatives of voting members interviewed is appended to this report.

- Interviews were also conducted with individuals who represented non-voting members as well as with NCL consultants and others who could provide technical advice or external perspectives on NCL. In some cases, these individuals asked that their names not be mentioned in this report. A partial list of these individuals is also attached.

- A variety of NCL documents were obtained and reviewed. These included:
  - NCL's Charter, Bylaws, and membership list;
  - Minutes of most NCL meetings over the last 5 years;
  - NCL financial statements for the last 5 years;
  - Records of NCL's 2001 strategic planning retreat;
  - Miscellaneous documents related to NCL's public policy work;
  - A wide range of documents relating to NCL's Summit Implementation project, including the project's comprehensive FY 2002 report;
  - Various documents related to NCL fundraising efforts.

The preliminary verbal report presented at the NCL's September 4 meeting was based on the interviews and document reviews mentioned above. This final report is based on the valuable feedback received at that meeting, supplemented by some follow-up interviews and document reviews.

CAAL and the author of this report would like to thank NCL and its members for the opportunity to conduct this study and for their cooperation in carrying it out. With few exceptions, the individuals interviewed cooperated fully in every way, spoke candidly and promptly provided materials upon request. Without their generosity, it would have been impossible to carry out this project. In return, CAAL hopes that this report will live up to the expectations of NCL members and provide them with the benefits they desire.

II. NATURE & MISSION OF THE ORGANIZATION

At present the National Coalition For Literacy (NCL) is an unincorporated umbrella organization, with a membership consisting of most of the larger non-profit leadership groups with an interest in adult education and literacy on a nationwide basis. The organization has two classes of members: voting or "sustaining" members and non-voting or "affiliate" members. Most of the non-profits with a national focus, as well as some organizations with a local or regional focus, fall into the first category. Government agencies associated with literacy and a number of other organizations are non-voting "affiliates." As of September 1, 2002, total membership consisted of 34 voting members and 13 affiliates, although a number of members in both categories have been inactive for some time.

The stated purpose of NCL is to advance the cause of adult literacy in the United States by various means. Specifically, its charter states: "As an initiator, promoter and advocate for national literacy improvement its purposes are to:

- Serve as an authoritative commentator on emerging literacy issues;
- Sustain and expand public awareness of literacy and its relation to other social issues;
- Foster collaboration at national, state and local levels among public and private institutions;
- Provide a communications and coordinating forum for its member organizations;
- Encourage applied research and its effective dissemination;
- Serve as an information and communications source for the public and for external organizations; and
- Serve as a leadership voice for the literacy movement.

In short, NCL aspires to perform many of the functions that a national leadership organization in the literacy field could be expected to perform, and it is the only organization of any sort in the United States that aspires to perform the full range of these functions.

The Coalition and Coalitions Generally

As a cause-driven national leadership group, NCL can be usefully compared to similar organizations in other fields. Virtually every social cause in the United States is represented by one or more umbrella organizations, variously called "The National Coalition on…" , "The Council for…", "The American Council on…", and other such names depending on the field of interest. There appear to be several thousand such organizations in the U.S. Most of them claim to be national leadership organizations and to perform the same general range of functions to which NCL is dedicated (commentary, public awareness, collaboration, communications, research and advocacy) to advance the public interest in their fields. The membership of most National Coalitions consists of

organizations, rather than individuals, although some have individual membership arms. (The term "association" is usually used to denote individual membership groups in the non-profit world, although it is commonly used to denote organizational membership groups in the business world – e.g., "trade associations".) National coalitions differ somewhat in their organizational structure, but most of them have the following characteristics in common.

- They are incorporated entities under Section 501(c)3 of the Internal Revenue Code;
- Most of their executive functions are carried out by permanent paid staff – usually two or three staff members at minimum, operating under the supervision of a board;
- The function of the staff is to serve the members – members are expected to play an active role in the program to the extent that their other responsibilities allow (e.g., by serving on committees, performing representational functions, assisting with fundraising, attending general meetings) and one function of the staff is to facilitate their involvement;
- They have a permanent central office – often in Washington, D.C.;
- They operate on budgets ranging from a few hundred thousand dollars per year to several millions;
- Their funding comes from a combination of membership dues (or other member financial contributions) and grants from public and private agencies;
- In most cases National Coalitions aspire to cover their minimal core operating expenses by dues (hard money) and their programmatic costs by grants (soft money).

NCL has none of these organizational characteristics. It is not incorporated and has no permanent staff or central office. Its members do not pay dues, and its revenues come from occasional small contributions (from its members or other sources) as well as occasional project funding. Its functions are carried out by representatives of its members on a volunteer basis and by part-time paid consultants or contractors, when funds are available to support them. As of September 1, 2002, its financial assets consisted of a few thousand dollars, and its revenues have been inadequate to support a permanent infrastructure, at least in recent years.

In its organizational structure, NCL most closely resembles a class of organizations usually called "Ad Hoc" Coalitions. There are also many thousands of these in the United States. Like NCL, they are usually unincorporated entities with no permanent staff or office, and they usually operate on tiny budgets. Also like NCL, they rely primarily on volunteer staff from their members to perform their functions, together with occasional outside assistance.

The reason why Ad Hoc Coalitions operate in this way is that they are almost invariably formed to support some short-term cause (such as advocating the passage of a particular piece of legislation or raising funds for a worthy purpose). Their members do not expect that these Coalitions will have a lengthy lifespan, nor do they aspire to

perform the range of functions that NCL and other National Coalitions embrace. Consequently there is no need for incorporation, permanent infrastructure or large budgets. In addition, many Ad Hoc Coalitions are organized and sponsored by one or more large, permanent organizations, which provide the required executive support gratis.

In essence, NCL is an organization with the structure of an Ad Hoc Coalition that aspires to perform the functions of a National Coalition. This is not accidental. NCL originated as an Ad Hoc Coalition. It was formed by a number of leading literacy organizations in the early 1980's to provide support from the literacy field for a short term purpose. That purpose was a public awareness campaign on literacy launched by the Advertising Council. Throughout most of its history, NCL has maintained its identity primarily to support a succession of other short-term causes (such as support of other public awareness campaigns and passage of the National Literacy Act of 1991). Because of its longevity and the salience of its activities, it has grown in membership and its meetings have become an opportunity for networking among its members.

Organizational Structure

To support its activities, NCL has developed an organizational structure that reflects its volunteer culture. Ultimately, decision-making authority is vested in the membership as a whole acting at four quarterly meetings each year. In the intervals between these meetings, authority is vested in an Executive Committee of NCL's elected officers (Chair, Vice-Chair Elect and Secretary) plus its immediate past Chair, the Chair of its Finance Committee and two at-large members. These meetings are usually held by telephone. In practice, most of the responsibility for oversight and management of the organization as a whole falls on the volunteer Chair.

Volunteer committees or task forces carry out most of NCL's program activities (and some management functions). The most active of these in recent years have been the Public Policy Committee, the Research Committee, and a Committee on Racism and Poverty, as well as a Task Force responsible for carrying out a project to implement the recommendations of the National Literacy Summit. Both the Public Policy Committee and the Summit Task Force have employed part-time consultants to assist in their work. In addition, there are NCL committees on membership, program, and communications, which have been largely inactive in recent years.

Because of the volunteer nature of the organization, the effectiveness of its overall management as well as of its committees depends on the amount of time the individuals responsible for them can devote to NCL activities. This has varied over the years. For the most part, members have not been able to devote enough time to make the various committees and taskforces truly collaborative bodies. Most of the responsibility for committee work has fallen on individual volunteers or consultants, acting in consultation with other committee members and reporting quarterly to the membership as a whole. Because of time and resource limitations, the effectiveness of both overall management and committee work has been uneven.

The Crux of the Problem

In short, NCL aspires to perform the national leadership functions and membership services of a National Coalition, but it has never developed the organizational infrastructure that most other fields believe is necessary to support those functions. It has ambitious long-term goals, but its infrastructure is best suited to performing discrete short-term missions. This mismatch between mission and structure is the essence of the organizational challenges that NCL faces today.

III. STRENGTHS OF THE ORGANIZATION

Despite its ambiguous organizational structure, most of its members and many outside observers believe that NCL has several strengths in its present form. By all indications, they are correct in their estimate of what these are.

Symbolism

Most NCL members believe that the greatest strength of the organization is symbolic. They believe that the very existence of a National Coalition of any sort that can claim to speak for the literacy field as a whole asserts the status of literacy as a major national priority. And they are undoubtedly right. Every other national cause of any consequence is represented by a national coalition of its leaders. Literacy would be accepting a second-rate status if it did not claim similar representation.

Networking

In addition, most NCL members value the opportunities that NCL meetings provide for networking. This is particularly true of people who are fairly new to the literacy field. Literacy service in the United States is notoriously fragmented. Members find NCL meeting to be one of the few ways in which they can keep up with what is going on nationwide.

Public Policy

Members also value NCL's policy activities. These are primarily carried out by the organization's Public Policy Committee. This committee is comprised of members acting on a volunteer basis and of volunteer or part-time paid consultants. NCL does not assert policy positions unless they are approved by all of its members. The Policy Committee and its consultants track policy developments affecting literacy at the federal level, provide information and advice to policy makers, draft and circulate informational materials and positions, attempt to broker agreements on contested issues, and facilitate contacts between NCL's members and members of Congress or the Executive (e.g., through arranging "lobby days" or inviting policymakers to meet with the membership).

Members value these policy activities, because no other independent organization even attempts to represent the interests and views of literacy field as a whole to Congress and the Administration. Nor does any other organization provide a means to keep members informed about policy issues and developments, or to facilitate the involvement of most literacy groups in the policy process. Most member organizations do not have Washington policy representation or expertise. They believe that they would be in the dark about many aspects of national policy affecting literacy if it were not for NCL's activities.

Finally, at least some members believe that NCL's Policy Committee encourages members with differing policy views to iron out their differences. Most of the major literacy stakeholders are members of NCL and represented on the Policy Committee. Their interactions in carrying out the functions of the Committee and the requirement that they cannot claim to speak for NCL unless they find common ground on disputed issues, may help to overcome differences in the field.

Other Programs

Members value some of NCL's other programmatic activities, such as its role in facilitating the Literacy Summit Activities and the work of its Research Committee. Awareness of these activities is lower than is awareness of NCL's networking and policy functions, but some members believe that they have benefited from these aspects of the NCL program.

Auspices

Members value NCL for its auspices. They believe that there is strength in numbers. Positions asserted by any one of the NCL membership organizations may be seen as special pleading. Positions asserted on behalf of the full membership may have greater weight as expressions of the public interest in literacy. In some cases, NCL auspices provide members with access to policymakers and others that would not otherwise be possible.

Flexibility

Finally, members value NCL for its flexibility. They believe it is important to have an organization that can respond to opportunities to further the literacy field, or to major problems threatening it, as those opportunities or problems arise. NCL is the only organization that provides an established framework for mobilizing the literacy field as a whole in times of great opportunity or great need. In this regard, members believe that the "ad hoc" organizational structure and culture is a plus.

In Sum

In sum, most members believe that NCL in its present form has many strengths. It demands very little of its members, but it provides them with the opportunity to support a number of important functions at very little cost. In part, members gain that opportunity simply by virtue of belonging to the organization – by lending their names to it and attending meetings. In part, the opportunity exists due to the fact that members can voluntarily do as much or as little as they want to participate in NCL's programs. In fact, members pick and choose which, if any, of these are of greatest interest to them.

IV. LIMITATIONS OF THE ORGANIZATION

Most of NCL's limitations mirror its strengths. Ultimately, most of the organization's challenges arise from the fact that it relies primarily on the voluntary donation of time by representatives of its members to achieve its goals. Quite simply, very few representatives have enough spare time to donate. As a result, it is virtually impossible for NCL to perform most of its functions as effectively as most members and outside observers believe they should be performed.

Visibility

NCL can play a symbolic role only to the extent that it is known and understood by people both within and outside the literacy field. Interviews conducted with people of both sorts indicates that NCL in fact has a fairly low profile and a remarkably soft image. Quite simply, a great many people in the literacy field do not know that NCL exists, and most people who are aware of the organization have little understanding of its purposes, structure, or activities. Many representatives of member organizations report that they had little understanding of NCL until they started attending meetings. The organization's visibility is even lower outside the field. Many policymakers, for example, are unaware of it or confuse it with other organizations, including some of its members.

This low visibility is partly due to the fact that NCL performs very few activities, and some of its activities (such as the networking functions performed by its quarterly meetings) primarily consist of interactions among its members. Moreover, its identity is confused because most of its activities are carried out by representatives of its member organizations. Outsiders may be uncertain whether these individuals are acting on behalf of NCL or their employers. To confound the problem, most of the consultants and contractors NCL has employed in recent years are also employed by its members. And NCL has no fixed address or phone number. (Usually the address and phone number of the Chairperson are used as a central contact point, but other contact points are established for particular projects.) The absence of a staff and office solely identified with NCL leads to problems of identity.

Finally, NCL has taken few measures to promote itself. It has a website that explains the essentials of the organization, but it has taken few measures to encourage public interest in the website or in the organization more generally. While some membership organizations disseminate information about NCL's activities to their grass roots affiliates, it appears that this does not happen very often. Other reasons for NCL's low visibility are related to its other limitations, mentioned below.

In short, insofar as NCL aspires to perform a leadership function by symbolizing the importance, scope and unified purpose of the literacy field, its effectiveness is decidedly limited, because its visibility is very low.

Operational Effectiveness

Follow-up. The major criticism of NCL expressed by those who are active in the organization is "lack of follow-up." This problem ultimately arises from the volunteer nature of the organization.

The follow-up problem takes several forms. Too often, according to members, resolutions are adopted by the group, people are assigned to implement them, and the result is little or no action. Theoretically, it is the responsibility of the Chairperson and Executive Committee to insure this type of follow up, but both the Chairperson and Executive Committee members often do not have the time to do so. Moreover, given the volunteer nature of the organization, no one has the authority to demand follow-up.

An equally serious follow up problem is lack of committee and consultant oversight. Most of NCL's work is tasked out to committees and/or consultants. In recent years some committees (e.g., those on membership, communication, and program) have been largely inactive. The active committees (those on policy, research and the Literacy Summit) appear to act more or less autonomously. They report verbally at the organization's quarterly meetings, but they rarely issue written reports on their activities or expenditures. They communicate with other members on an ad hoc basis, depending on the flow of their work. As a result, virtually no members of NCL appear to be aware of what the Research Committee is doing (other than its members), and understanding of the Summit Initiative Taskforce is limited. Activities of the Policy Committee are more visible, importantly because it includes virtually all members interested in policy, but even this group does not issue regular reports to the membership as a whole.

In short, NCL's committee oversight is typical of what can be expected from a volunteer organization. For the most part, neither the organization's leadership nor the group as a whole acts to supervise, direct, motivate, discipline, or support its committees on an on-going basis.

The final follow-up problem relates to the committees and consultants themselves. Because members volunteer their time for committee work and most consultants are employed on a part-time basis, there are severe limits to how much committees or taskforces can achieve. All of the active committees and taskforces have ambitious mandates from NCL, but their leaders admit that participants in these groups cannot devote adequate time to fulfill those mandates. As a result, too often initiatives are launched at the committee level, but there are inadequate resources to fully implement them.

Decision-making. In addition to follow-up problems, NCL suffers from a number of other operational problems. The problem most frequently mentioned is that decision-making can be slow. The organization's bylaws vest most decision-making authority in the Executive Committee or the membership as a whole. No precise voting rules are stated for either group. Some members believe that decisions must be reached by

consensus and others believe that majority votes are sufficient. The bylaws are silent on this matter, leading to a search for consensus which can delay decisions.

Equally important, assembling a quorum of either the Executive Committee or the membership sometimes proves difficult. The Executive Committee usually meets by phone, and it attempts to meet monthly. But other demands on members of the committee often mean that a majority cannot be assembled quickly and that decisions must be deferred. The general membership meets quarterly. In recent years there have been difficulties in finding a date when a quorum can attend, and at some meetings a quorum has not been present. This problem is due in part to the fact that a number of listed members have been inactive for some time and other members either cannot afford to attend meetings on a regular basis or have decided to scale back their participation in the organization.

Financial management. Financial accountability is another on-going problem. NCL's bylaws do not establish the office of Treasurer, which is common in most organizations. Rather, the bylaws vest responsibility for the organization's finances with a Finance Committee. At least in recent years, this committee has had no members and has not functioned. In practice, the organization's finances are managed by a fiscal agent, the American Library Association, on a pro bono basis. ALA's accounting department receives and disburses funds on behalf of NCL. Because this is a minor function of the ALA, financial reports are often not forthcoming on a timely basis and are sometimes fairly cryptic. The minutes of NCL meetings in recent years record numerous instances in which financial reports were unavailable or there was no one to explain them.

Inherent limits. In short, NCL suffers from most of the problems of operational effectiveness that could be expected of an organization that has few resources and relies primarily on the volunteer efforts of busy people. There is no way that such an organization can be tightly managed for maximum effectiveness, and NCL is not.

Programmatic Effectiveness

NCL attempts to achieve most of the goals stated in its charter in some fashion. But most members agree that its efforts fall far short of what is required to have a major impact on the advancement of adult literacy.

Networking. Information sharing among members is commonly cited as the most effective function that NCL performs. This takes place primarily at the quarterly meetings. But shortage of time at those meetings limits the amount of information sharing that can occur. Many members would very much like to see NCL expand its information sharing function. The newsletters and websites of most National Coalitions contain extensive information about the activities of their members – meeting dates and agendas, events, publications, personnel, job listings and a host of other resources. The availability of this type of information is often a major reason why organizations join coalitions, and it adds to their visibility. Many members would like to see the NCL develop more extensive networking resources of this sort.

Policy. NCL's public policy work is the other activity members frequently say they value. It is hard to assess the effectiveness of this work. This is because the individuals who lead NCL's policy activities are largely staff of member organizations or consultants employed by those organizations. As a result, they are engaged in policy analysis and advocacy on behalf of individual members, as well as on behalf of NCL. Moreover, the issues they address and the activities they perform are very similar whether they are wearing their NCL hats or the hats of member organization. It is, therefore, difficult to untangle what NCL does on the policy front from what its more policy-oriented members do.

The best that can be said is that NCL may provide auspices that facilitate collaboration among individuals active in advocacy in the literacy field. However, the number of such individuals is small, and it is arguable that they would find it advantageous to collaborate in any event. Moreover, NCL members have recently experienced great difficulties in ironing out differences among members on key issues of appropriations formulas and the framing of an "omnibus" literacy bill. This casts doubt on the extent to which NCL's auspices help to build consensus in the literacy field – in the policy arena, at least.

Assuming that the some portion of the sum total of policy advocacy on behalf of literacy can be attributed to NCL, how effective is this effort? Broadly speaking, advocates associated with NCL seem to do a fairly good job of tracking policy issues related to literacy, particularly in Congress. They also appear to do a good job of providing pertinent analyses to Congressional committee staff and representatives of the Administration on selective issues and, in some cases, at negotiation resolution of those issues. However, the number of issues they can cover is decidedly limited. For example, NCL has played little role in the reauthorization of welfare legislation to date. And its record of success is mixed. For example, literacy advocates were not successful in combating the Administration's efforts to level-fund literacy in FY 2003.

Moreover, there are a large number of policy activities that literacy advocates do not perform. Despite their success in tracking issues, they do not communicate the on-going ebb and flow of the policy process to the literacy field as a whole through regular policy updates of the sort that are commonly issued by National Coalitions. They also rarely attempt to mobilize the grass roots membership of NCL to support or oppose policy positions. In recent years, they have been unsuccessful in recruiting champions for literacy, either in Congress or in the Administration, and it appears that they have had limited success in raising awareness about literacy issues among policymakers.

With regard to particular issues, advocates for literacy have been largely reactive rather than proactive. They have not injected very many new ideas or initiatives into the policy process. They have rarely engaged in policy research or strategic planning that would develop new ideas or support old ones. Finally, they have rarely formed alliances with other groups in the education, welfare, or job training fields whose interests overlap

with those of the literacy field. And they have focused almost exclusively on federal policy, thereby neglecting the important state role in literacy policy.

A fully effective advocacy effort usually includes all of these components and more. Most National Coalitions mount such efforts. No organization, including NCL, does so on behalf of literacy. It is hard to imagine that the literacy field will have a large effect on the directions of national policy unless NCL or some other organization expands its advocacy efforts.

These shortcomings should not be laid at the feet of the individuals involved in advocacy on behalf of the literacy field. They manifestly have too little time and too few resources to do the job required, and they admit it. In the circumstances, it is remarkable that they accomplish as much as they do. There is not a single individual outside of government who has the full time job of policy development and advocacy on behalf of the literacy field as a whole. Most National Coalitions devote the time of one or more staff members to this task. Moreover, the resources available to NCL for these purposes have recently diminished. For several years, Literacy Volunteers of America donated a portion of the time of Jon Randall, a policy consultant with expertise in literacy, to act on behalf of NCL. That donation is no longer available, leaving NCL's policy work largely in the hands of volunteers.

Research. Aside from networking and policy, NCL's programmatic record has been thin in recent years. The organization's Research Committee began an important program of mapping recent research in the literacy field against research priorities established by the National Institute for Literacy. The result could help to indicate future research priorities and support the case for additional research funding. Unhappily this effort has been stalled for almost a year, in part because it depended entirely on volunteer efforts and because of a change in leadership of the Research Committee. An effort with at least some funding might have been more successful.

Awareness. Although NCL's origins were in activities to support public awareness about literacy problems, it has not mounted or supported a public awareness campaign for some years. Nor has it participated in other public awareness campaigns, such as the efforts recently launched by the National Center for Family Literacy and the U.S. Chamber of Commerce. And it has not been engaged with planning efforts by Wal-Mart and other sponsors for public awareness activities. Mounting and participating in public awareness efforts require a substantial investment of time. NCL members have simply been unable to make that investment, and there is no staff to assist them.

Summit. With federal funding, NCL's Summit Task Force has managed to begin a process of fostering collaboration among literacy agencies at the national and sub-national level. But that funding has been limited, the goals of the project have necessarily been restricted, and it is unclear whether the funding will be renewed.

Funding Problems

In short, while NCL has some programmatic accomplishments to its credit, it falls far short of achieving the goals in its charter. And the primary reason for this is lack of resources.

Because its members have traditionally seen NCL as a volunteer organization, levels of funding and fundraising have rarely been a priority. As noted NCL's members do not pay dues to the organization. Its funding has largely consisted of occasional contributions from some of its larger members, occasional small donations from corporations and other benefactors, and even smaller amounts of income from events. Drawing on all of these sources, its general account balance was slightly more than $30,000 in 1998. That balance as of September 1, 2002 was about $4,000.

In addition, NCL has managed one funded project in recent years: a Task Force to implement the recommendations of the National Literacy Summit. For these purposes, the organization received $80,000 in both FY 2001 and FY 2002 – a total of $160,000. Half of this funding came from The U.S. Department of Education and half from the National Institute for Literacy. It was not possible to obtain a precise accounting of these funds, but they are reportedly exhausted or committed. An application for third year funding for this project was submitted to the National Institute for Literacy in August of 2002.

In 2001, NCL retained the services of a fundraising consultant to explore the possibility of grants from private foundations and corporations. The consultant discovered some interest in both sectors, but this fundraising effort was truncated in the spring of 2002. One reason for its termination was that at least one potential source of support expressed a reluctance to fund NCL unless it became an incorporated tax-exempt entity under the provisions of Section 501 of the Internal Revenue Code.

NCL can probably expect to encounter this problem in any effort to raise more than trivial sums of money. Due to Internal Revenue Service regulations, most grant-makers will only support incorporated, tax-exempt organizations. Grantmakers place themselves in peril unless they follow this rule. The purpose of the relevant IRS regulations is to insure accountability for the use of funds and to insure that they will be used for exempt purposes. Incorporation insures accountability, and tax exemption under Section 501 insures purposes. The type of organization most favored by grant makers is a corporation declared to be tax exempt by the IRS under the provisions of Section 501(c)3 of the Internal Revenue Code (often referred to as a "public charity.")

Moreover, grantmakers are extremely reluctant to make "pass-through" grants. These are grants to a tax-exempt organization that acts as a fiscal agent for another entity, in the manner that ALA acts as a fiscal agent for NCL. This reluctance is due to the fact that both grantmakers and the IRS believe that the chain of accountability becomes too

long in pass-through arrangements. Moreover, there have been abuses of these arrangements, which both funders and the IRS know well.

In addition, at least some grantmakers are reluctant to support membership organizations that do not receive regular financial support from their members – either in the form of dues or some other type of payment. Unless an organization's members are indigent, many funders question why they should provide financial support if its members will not. Dues or their equivalent are often seen as an indication that members believe an organization is important and are committed to its long-term success.

In short, NCL has virtually no financial resources and little prospect of obtaining them by grant funding unless and until it becomes an incorporated tax-exempt organization. It may, however, be able to raise small amounts of money by its traditional means – ad hoc contributions from members or other benefactors or events.

These funding issues place severe limitations on the ability of NCL to achieve its stated goals. By all indications, representatives of member organizations cannot volunteer any more of their time. Any substantial increase in the scope or effectiveness of NCL's program will, therefore, depend on the organization's ability to retain paid staff or consultants. Absent a substantial infusion of funds, both from members and grant makers, there appears to be little likelihood that NCL can achieve more than it does now.

V. OPTIONS FOR THE FUTURE

Broadly speaking, there are four major options for the future of NCL:

1. Disband the organization;
2. Maintain the status quo;
3. Make modest improvements within the present organizational structure; and
4. Convert the organization into an incorporated, tax-exempt entity and seek funding to support the staff required to expand and strengthen its program.

Options 1 & 2 – Disband the Organization and Maintain the Status Quo

The first option listed above appears to be a straw man. Because NCL is an unincorporated volunteer organization and lacks infrastructure, staff, obligations, or assets, there is practically nothing to disband. A decision to cease operations would consist of little more than a decision that the present elected officers would resign or no longer perform their duties and that the members would no longer meet under the NCL name. There seems to be no reason why this should be a deliberate decision by the organization. There is certainly no indication that NCL does any harm. As a result, there is no reason to disband it as long as any eligible persons wish to assume its elected offices and any of its members wish to participate in any fashion. If and when this ceases to be the case, NCL will be disbanded de-facto.

The second option is, in effect, evaluated by the discussion of NCL's strengths and limitations above. Virtually all of these are inherent in the present organizational structure and culture. If members are satisfied with NCL's present strengths and limitations, they should opt to maintain the status quo. However, most members interviewed in the study leading to this report said that they are not satisfied. They would like to see NCL do a better job of achieving its goals. Hence, the only reason to maintain the status quo is if members believe the costs of organizational change are too great -- if they are unwilling and/or unable to decide on a new direction for NCL and to devote the time and resources required to pursue it. As a result, the merits of maintaining the status quo depend largely on the merits and liabilities of the two other options. These will be discussed below.

Option 3 - Strengthen the Present Organization

Most of NCL's present problems arise from the fact that it has inadequate resources – both personal and financial – to overcome its operational and programmatic limitations. Within its present organizational structure, it is unlikely that it can attract substantial additional funding. There are, however, a number of steps its members might take to somewhat improve its effectiveness, while maintaining its status as an unincorporated volunteer organization. These include the following:

- Narrow the organization's focus to a few small but important tasks that are commensurate with its resources. For example, rather than attempting to advocate the views of the literacy field on most major public policy issues, NCL might concentrate its advocacy resources on one or two aspects of a single issue that its members consider particularly important. Or it might renounce its present advocacy efforts entirely and concentrate on informing the debate by issuing one or more carefully considered "white papers" on policy issues each year, or by issuing monthly policy tracking reports.

  Beyond (or instead of) advocacy, the organization might revert to its original mission of supporting public awareness campaigns. As noted above, a number of groups are launching or considering launching campaigns in the literacy field, and NCL might seek to be more actively involved in one or more of these efforts. Another option would be to concentrate on improving communication within the literacy field. Expanding and maintaining the NCL website might become a primary mission. These types of discrete activities would seem to be within the capacity of a volunteer organization with limited means. By concentrating its resources on fewer and smaller goals, NCL might achieve more in what it attempts.

- Strengthen management. Even a more targeted organizational agenda may be difficult for NCL to implement effectively unless the organization addresses some of its management issues. Some of these can be addressed quite easily by clarifying expectations about what individuals and committees will or can do, and by better communication about their progress or difficulties. Elementary management tools such as work plans, regular written reports, and budgets (where appropriate) can help to establish and maintain realistic expectations, and they can provide opportunities for members not directly involved in a project to pitch in and help as required. Clearer decision rules for both the Executive Committee and the general membership would also be helpful. Measures of this sort can help to reduce unnecessary friction due to misunderstandings in a volunteer group.

- Increase visibility. Most volunteer groups are good at sponsoring events that raise the visibility of both their organization and their cause. Events can also be an important source of revenue. NCL has sponsored an awards dinner and other events for these purposes in the past. It should consider reviving this aspect of its tradition in some form. There are many possibilities. At one extreme, it has been many years since a general-purpose national leadership conference on literacy was held in the United States. Such an event focused on policy challenges or revisiting the Literacy Summit agenda could be an important show of force for the literacy field at a time when its visibility is low. At the other extreme, smaller events such as public briefings or awards dinners are often remarkably successful in reaching target audiences. For a volunteer organization, events have the advantage of being time-limited, discrete activities in which roles and

responsibilities are easily defined. There may, however, be other targeted awareness building options.

- Recruit new members. A major reason to pursue this goal is that additional members should bring additional volunteer resources to NCL, and they may also bring fresh ideas and programmatic opportunities. Although a number of NCL's listed members are largely inactive, several organizations have recently applied for membership. Moreover, a number of possible members readily come to mind. Among these are the American Association of Community Colleges (community colleges are large literacy providers), The United States Chamber of Commerce (which has a workforce education program and recently-launched awareness campaign), and The Educational Testing Service (which is developing a new literacy program). In addition, NCL might invite more sub-national organizations – such as state literacy resource centers and literacy councils – to become members. The organization already has a number of sub-national members. These groups may gain special value from the national networking opportunities that NCL membership provides.

- Obtain additional financial resources. If NCL adopted a more targeted agenda, it would not require large financial resources, but it would need some additional funds. Sponsoring events is one possible source already discussed. Asking members to make voluntary contributions or pay dues is another. If dues were set at $200 per voting member, NCL would more than double its existing treasury. If they were set at an average of $1,000, the organization would have more uncommitted funds than it has had in many years.

  Almost all of the members interviewed in the study on which this report is based were asked whether they would be willing to pay dues. All of them said that they would be willing to do so, provided that NCL attempted to improve its effectiveness. Other possible sources of revenues include small donations from corporations or other benefactors. To pursue this option, NCL should establish a program plan and a modest budget goal (perhaps on the order of $30,000 - $50,000 per year) to guide fundraising efforts.

These and other fairly small steps might lead to modest but valuable improvements in NCL's effectiveness. Among the pros and cons of adopting a strategy of organizational improvement within the existing framework are the following:

Pros:

- This strategy can be phased in gradually and without the need for major changes in NCL's structure or organizational culture;
- In terms of the time and resources required, it is a low-cost option;

- It emphasizes the types of activities most suited to volunteer organizations;
- By narrowing the scope of activities, it would allow NCL to address the "follow-up" issue more effectively;
- If implemented effectively, it would allow NCL to claim some solid accomplishments in a few areas, and it would thereby help to define the organization.

Cons:

- Neither this nor any other program of organizational improvement can be implemented without a greater investment of time on the part of NCL leadership, and it is unclear whether that leadership can devote additional time;
- In pursuing this option, NCL would forgo the opportunity to increase its financial resources by grant funds, and it probably could not increase them significantly by any means – in essence it would remain a volunteer organization with practically no financial assets;

- NCL is already attempting to pursue some of the items on this agenda (such as new membership recruitment and improving its web site), and even these appear to stretch the available volunteer time very thin;
- Although this option might improve NCL's performance somewhat, it is unclear whether members would be willing to exert the additional effort required for only modest improvements;
- This is particularly the case because pursuing a more ambitious agenda (following) would probably require about the same amount of effort;
- Even with these or similar improvements, NCL would still fall far short of its stated goals – there would be no national literacy leadership organization on a par with those in other fields;
- By narrowing its goals, NCL would virtually insure that the literacy field as a whole has very little influence on most of the near-term public policy issues that vitally affect its future.

Option 4 - Create an Incorporated, Tax-Exempt Entity

This option would entail creating a national leadership organization in the literacy field similar to National Coalitions in other fields. This would be a new organization. It would be incorporated, tax-exempt, supported by a paid professional staff and funded at a level adequate to achieve its goals. Those goals would be the same as NCL's present goals, but the new organization would have an organizational structure capable of more fully achieving them. That is, its major program priorities would be:

- Policy development, commentary and advocacy;
- Advancing the state of research in the literacy field;

- Increasing public and elite awareness of literacy issues and the literacy field;
- Serving as an information resource and single point of contact for its members, the literacy field as a whole, and the general public;
- Convening and mobilizing its members and others in the literacy field to address important issues of management and practice;
- Forming alliances between the literacy field and other causes with related interests.

The new NCL, like the existing organization, would be a membership organization, and its members would be any of the groups now affiliated with NCL that wish to join plus additional recruits. Like all membership organizations, it would be under the governance of its members, and its aim would be to "supplement rather than supplant" their activities – to empower them to collectively advance the cause of adult literacy by activities they cannot, or chose not to, carry out individually.

To create a new NCL, the following steps would be required:

- **Form a non-profit corporation and seek a federal tax exemption for that corporation** under the provisions of Section 501 of the Internal Revenue code, as well as any relevant local and state licenses. Because it would entail creating a new entity, any or all of the existing NCL members could take this step.

  Incorporation and tax exemption are fairly simple procedures if handled by a competent attorney. Neither should require large amounts of time on the part of the individuals creating the corporation. The cost of incorporation and obtaining a federal tax exemption usually runs in the range of $3,000-$5,000, although it can be as high as $10,000 if special problems arise. Usually incorporation takes only a few days or weeks, but IRS backlogs sometimes result in a delay of 4-9 months in obtaining a tax exemption. In general, incorporated non-profits can operate as if they had received an exemption (e.g., they can solicit and receive tax-exempt grants) as long as their application to the IRS is pending, but a competent attorney should be consulted on this point.

  Appendix II-A to this report is a document from Roha & Flaherty, P.C., a highly reputable firm specializing in non-profit law. It clearly explains the incorporation and exemption processes and the responsibilities that come with them. (Lobbying limitations are explained in Appendix II-B.) Another appended document, II-C, explains Roha & Flaherty's practice. This is included because it surveys the full range of issues that non-profits might face. Very few organizations encounter most of these issues, but anyone establishing a new non-profit should be aware of them.

  The author of this report has been instrumental in the creation of many non-profit corporations. He strongly advises that, if NCL pursues this option, the organization should retain a firm or attorney specializing in non-profit law. This

will save a great deal of time and effort and insure quality work. He strongly advises against seeking these legal services pro-bono. Many start-up organizations rely on pro-bono legal assistance, and their experiences are sometimes disastrous. Law firms generally delegate pro-bono work to inexperienced Associates to perform in their spare time. This frequently leads to long delays and poor work.

- **Create initial strategic, operational, and staffing plans and an initial budget.** The incorporation and exemption process will probably require these in any event. Even if they are not required for those purposes, they will be needed to guide the organization in the steps mentioned below.

- **Develop a fundraising plan and conduct an initial round of fundraising.** The primary goal of the initial round would be to obtain sufficient funding to commence operations. Initial funding should be sufficient to cover the salary of at least one staff member plus administrative costs for about one year. This would probably be in the range of $100,000. For reasons discussed above, the organization should charge dues. Initial fundraising would, therefore, consist of collecting dues and seeking modest amounts of grant funding.

- **After sufficient funds are in hand or in the pipeline, hire at least one full-time staff member (an Executive Director), obtain office space and other necessary physical infrastructure.** Because the Executive Director will bear much of the responsibility for the future of the organization, he or she should be selected by an open national search. The relevant qualifications for this position would appear to be association management (including advocacy) in some area of the education field. Expertise in literacy would be a desirable, but not necessary qualification. Because a large number of people have these general qualifications, there will probably be no shortage of candidates. NCL should select someone of the highest caliber and be prepared to pay at or above the prevailing wage for comparable positions.

- **Recruit members for the organization** beyond those who were involved in the initial incorporation. This process can begin before an Executive Director is retained, but should become one of his or her responsibilities thereafter. At least some options for new membership recruitment are discussed under Option 3, above.

- With the Executive Director, **refine the strategic, operational, and staffing plans and the budget.**

- **Commence operations on a phase-in basis.** Operations should be prioritized to phase in as the necessary funding becomes available.

- **Seek full funding for the initial years of operation.** Based on the experience of other National Coalitions and the established goals of NCL, a minimal annual budget in the range of $300,000 probably would be required. To be significantly

more effective than NCL presently is, the new organization would probably require at least two professional staff members – one to concentrate on policy and one to concentrate on management and other aspects of its program – plus consultants, support staff and operational funding. Ongoing funding on the level of $300,000 should be sufficient to support such an operation.

The elements of Option 4 should be considered as a single package. That is, there is no compelling reason to pursue incorporation, unless NCL members are prepared to contribute to the organization, engage in fundraising, retain professional staff, and launch a significantly more ambitious program than NCL can presently support. Conversely, the operational steps mentioned above (fundraising, staffing, and programmatic expansion) are probably impossible unless the organization is incorporated and tax-exempt.

NCL has been considering variations on Option 4 at least since the summer of 2001. It probably would have acted decisively, one way or the other, were it not for the fact that there are strong pros and cons associated with creating an incorporated entity. Among these are the following.

Pros:

- The creation of an incorporated, tax-exempt entity appears to be the only realistic means by which NCL can raise substantial additional funds.

- Because it appears that NCL's members cannot contribute any more volunteer time to the organization, retaining paid staff and obtaining the funds to support them, seem to be the only ways in which NCL can significantly improve its operational and programmatic performance – the only way it can significantly improve its ability to achieve its goals.

- Option 4 would establish NCL as a national leadership organization on a par with National Coalitions in other fields. The literacy field needs and deserves such an organization. NCL's Charter acknowledges this need. Other fields have determined that fully effective national leadership requires the type of organization described by this Option. The literacy field should benefit from their example.

- Adopting Option 4 would, at the very least, have great symbolic importance in asserting the importance of literacy as a national issue.

- Option 4 would allow NCL to perform its existing functions more effectively and to expand its agenda to meet its goals. It would also undoubtedly open up new opportunities to advance the literacy cause. The very existence of a full-time point of contact on issues of concern to the field as a whole would allow for rapid response to emerging issues and on-going contacts that are likely to generate alliances with other fields and other new program ideas.

- Finally, this option would make better use of the volunteer time donated by NCL's members. It would largely free them from administrative, managerial, and follow-up tasks (these would be the responsibility of staff) and allow them to concentrate on the higher value activities of establishing priorities and directions and participating in programmatic activities where their expertise and judgment will make a difference.

Cons:

- Option 4 would change the nature of NCL. It would no longer be primarily a volunteer organization. Members must weight the benefits of a volunteer culture against the limitations it imposes, and against the benefits of more fully achieving NCL's goals. Moreover, NCL can and should retain a strong volunteer component. Staff would operate under the governance of volunteer members. And one of the primary functions of staff should be to encourage and enable members to contribute as much volunteer time in as they can in many ways as possible – to make volunteering easier and more effective. In this sense, Option 4 would create a stronger volunteer culture.

- The start-up activities required (incorporation, tax exemption, planning, initial fundraising, and staffing) would be time-consuming. They would probably require someone to devote at least half time, and possibly full time, to this task for 3-4 months. Clearly, none of the people who presently represent NCL's members can volunteer this amount of time. They all have full time jobs.

  The logical solution to this problem is to hire a consultant to perform these functions in NCL's name under the supervision of the Executive Committee or some other founding group. Funds on the order of $20,000 - $25,000 would be required to reimburse such a consultant. In addition, funds to pay legal fees on the order of $5,000 would be required. This is a small amount to accomplish an important purpose. Funding could, and should, be made available by drawing on NCL's existing resources and by voluntary contributions from NCL members and others.

- Tax exemption would place limitations on NCL's lobbying activities. This would be particularly true if the organization sought exemption under the provisions of Section 501(c)3 of the Internal Revenue code (as it probably would). The lobbying restrictions on 501(c)3 organizations are described in detail in Appendix II-B, a memorandum from Roha & Flaherty, P.C., but no memorandum can completely capture all of their implications. In general, 501(c)3 organizations cannot spend more than 20% of their revenue for lobbying.

This is an important restriction and should be taken seriously. However, it is important to recognize that very few non-profits find this restriction onerous. The reasons they do not would require a separate report. Among them are the fact that most non-profits have other programmatic activities that consume more than 80% of their budgets: the larger the total budget of an organization, the larger the 20% allowance is. In addition, lobbying is defined in very specific terms by the IRS, and very little of what most non-profits do (including those concerned with public policy) falls under this definition, if carefully examined. In fact, most of the more effective forms of policy work do not fall under the definition. Exempt activities include policy research and dissemination of its findings, providing technical advice and assistance upon request to policymakers, and most general informational and awareness campaigns about an issue.

Very little of what NCL presently does in the policy arena would probably be considered lobbying. However, any non-profit should become fully informed about lobbying restrictions and their applications to its activities, and should consult a competent attorney if its officers have any doubts about particular activities.

- NCL would have to create an administrative infrastructure, including accounting, payroll and professional services, and it would have to file an annual tax return. At present the administrative overhead of the organization is virtually nil.

  It is important to recognize, however, that most of these overhead services can be purchased as a package from various companies at fairly low cost. Setting up this structure would be a responsibility of the Executive Director. NCL would be ill advised to accept these services pro-bono from its present fiscal agent or anyone else. The organization's finances should be under its own control. Moreover, funding organizations and the IRS often frown on pro-bono fiscal agencies. They may see it as a type of "pass-through" arrangement, and this may disqualify an organization from funding and also create tax compliance problems.

- The officers and directors of an incorporated NCL would be accountable and legally liable for the organization's performance and compliance with relevant laws. At present, no one is formally accountable or liable for what the unincorporated NCL does or does not do. This responsibility should be taken seriously. Unless officers and directors believe that the organization is important enough to accept responsibility for insuring that it is properly managed, they should not become associated with it.

  The purpose of corporate regulations is precisely to insure that someone will be responsible for the performance of an entity, and as such they should be welcomed. At heart, they require nothing more than good

management and effective performance. Improving management and performance are among the major reasons why NCL may wish to seek incorporation in the first place. As a result, this additional responsibility is part and parcel of what NCL should be seeking to attain if it opts for incorporation.

Increased accountability and liability may seem to be a heavy charge. However, most representatives of NCL members are already officers or directors of non-profits (their employers), as well as other non-profits, and as such they bear this liability, whether they realize it or not. In considering this issue, therefore, members should ask themselves whether they find their present liability burdensome. It is doubtful that they do. The responsibility involved in creating a new NCL is no greater than the responsibility that most members already bear.

- Some literacy organizations may be concerned that an incorporated, professionally staffed NCL would compete with its members for funding. This is, of course, an issue that all national leadership organizations must confront. Most of them manage to deal with it effectively, by a combination of strategies. The key to all of these strategies is establishing the policy that the leadership organization will not undercut the fundraising prospects of its members. Both elected leaders and staff are expected to define program priorities that are not competitive – projects that will unlock streams of funds not available to individual members. And they are expected to keep track of the activities of members so that any possible conflicts can be identified and resolved.

  Because money is fungible and the decision-making processes of most funders can be obscure, it is impossible to guarantee that there will be no competition. But most national leadership organizations appear to be satisfied with the controls they have in place. Moreover, they often adopt the view that one of the functions (and benefits) of an effective national leadership organization is to develop new sources of funding for its members and to help them access those sources. In the literacy field, it would appear that there is sufficient grant funding available from various sources (some of them largely untapped) to support at least a core NCL budget on the order of $300,000 without undue risk of competition.

- Members might have less control over a more professionalized NCL. Control is always an issue for any organization with a professional staff and a fairly large agenda. Individual members cannot expect to exert the type of control they exercise over a small, volunteer organization. This is simply the price of greater scope and effectiveness. Organizations deal with this issue by governance structures and policies that make the staff accountable to the membership as a whole.

In fact, a more formalized governance system and greater follow-up capacity would make NCL more accountable to its members in some respects. At present some members feel that they are inadequately informed or consulted about many of NCL's activities. And some are concerned that their priorities are not fully considered. These problems are largely due to limitations on the time and resources available to fully inform or involve members and to staff out programmatic options.

- A special concern of NCL members about the existing organization and any future version of it is how organizational positions on matters of importance will be established. At present, NCL attempts to act by consensus, but this often results in gridlock. On the other hand, there are sometimes strong differences of opinion among the members of any organization, and members are understandably reluctant to see the organization support positions they oppose.

  The solution to this problem adopted by most organizations is to avoid taking organizational positions except on issues where there is a general consensus. On other issues, membership organizations usually disseminate position papers that examine different points of view. Or they require a majority or super-majority vote to adopt an organizational position. And they represent the positions taken in this way as solely the views of the members who support them. In general, however, the mission of membership organizations is to find and enlarge areas of common ground. Most of them rarely adopt organizational positions on disputed topics, nor does NCL.

- Some organizations now listed as NCL members would probably not join a new, dues-paying organization. As a result, listed membership might drop and NCL might appear to be a smaller, less comprehensive and weaker organization. A number of listed members have been inactive for quite some time and some others play only a small role in the organization.

  On the other hand, NCL already recognizes that new membership development is imperative. A stronger, more effective NCL may well be more successful in attracting new members and in rekindling the interest of those who have been inactive. In general, it would seem that a membership comprised of organizations truly dedicated to NCL's goals should be the goal. Listing nominal members may be of dubious benefit if the organization's bona fides are questioned, and it appears to create practical problems of convening a quorum to do business.

- Most NCL members interviewed in the study leading to this report expressed no concern about paying dues, if NCL could become more effective. The amount of dues is, of course, an issue for all organizations,

and if dues are set too high they may be an impediment to attracting or retaining some members. Most organizations solve this problem by a progressive dues scale and by tacitly allowing members with financial problems to fall into arrears.

- There is the possibility that efforts to create a new NCL would fail or prove unsatisfactory for any number of reasons. And there would be a cost for failure. Time and resources would be expended, and the existing organization might be destroyed. This risk is inherent in any organizational change. Members must weight it against the limitations of the existing organization and the potential benefits of a new entity. Creating any new organization is always to some extent a leap in the dark. NCL members should not take that leap unless they are committed to making the new organization a success.

  It is important to recognize, however, that all NCL members need not endorse this change. At present NCL is not a legal entity. As a result, neither the organization nor any of its members probably have any rights to its records, resources, or even its name. Any group of members that wished to seek incorporation and tax exemption as "The National Coalition for Literacy" could do so. Obviously it would not be desirable for a splinter group to take this action. This is because the purposes of NCL include promoting collaboration across the literacy field as a whole, and the organization aspires to be as inclusive as possible. However, there appears to be no reason why a consensus among the existing members should be required before a new organization is formed, desirable as consensus may be.

VI. THE IMPERATIVE FOR ACTION

It is impossible to make a responsible assessment of the various options for NCL's future without taking account of the challenges presently facing the literacy field. Because NCL aspires to be a national leadership organization, it should consider seriously the issues on which national leadership is required and its capacity to address them.

In particular, there are at least three critically important issues – all of them in the public policy field – that will be resolved in 2003:

- reauthorization of the Workforce Investment Act (WIA);
- reauthorization of TANF (welfare legislation);
- the future of the National Institute for Literacy (NIFL).

All of these issues have a profound impact on the literacy field, because individually and collectively they will define the federal role in adult literacy for many years to come.

The present version of WIA is unsatisfactory to most members of the field for a large number of reasons. Reauthorization will determine levels of available funding and how funds are distributed. It will also determine whether and how a number of longstanding issues will be addressed. These include accountability, governance, the status of ESL, support for volunteer groups, and providing adequate resources for program improvement. Reauthorization will also affect future relationships between the literacy field and the job training systems. It is hard to imagine a more important set of issues for the literacy field.

The reauthorization of TANF could provide major opportunities for literacy. Previous federal welfare legislation (the Family Support Act) made available large resources to serve low-income populations. For the most part, state governments, localities, welfare systems, educational agencies and literacy providers did a poor job of using these resources. Misleading evaluation research compounded the problem. As a result, TANF greatly reduced the resources available to provide literacy services to the poor and restricted the means by which they could be provided.

Present ideas for reauthorization of TANF would narrow the window even more. The opportunity for literacy is that the *need* for literacy and other adult education service to welfare recipients has not diminished. In fact, it has become more acute and visible as the welfare roles have been reduced to "the hardest to serve." State governments appear to be particularly sensitive to this problem at present. If the literacy field can work with them to make a case for greater flexibility in TANF when it comes to adult education, substantial benefits could be realized for a population very much in need and for those who wish to serve them.

The future of the NIFL, as NCL members know, appears to be uncertain. Almost two years into a new Administration, it still does not have a permanent director and its future programmatic directions (as well as possibly its existence) are in doubt. NIFL is the only federal agency solely devoted to furthering the literacy cause, and it has had the resources to make large contributions to the field. Moreover, issues related to the future of NIFL are part and parcel of whether and how the U.S. Department of Education will help the literacy field. Communications between the Department and the literacy field have been poor, and it is unclear what the Department's policies on literacy are or will be.

These three critically important policy issues will be resolved in 2003 with or without input from the literacy field. At present, there is no reason to believe that policymakers will "do the right thing" from the perspective of the field without that input. No one interviewed in the study on which this report is based said that they believe that NCL or any of its members acting individually presently have the capacity to represent the views of the literacy field adequately on these issues. At the very least, the dissemination of more accurate information to more policymakers is required, and the perspective of the literacy field should be better understood. Individual members of NCL will always be regarded as special pleaders on policy issues, to some extent. Representing the views of the literacy field as a whole is a role uniquely suited to NCL.

With regard to public policy, therefore, 2003 will be a watershed year for literacy. This creates an imperative for action on the part of NCL. The organization must decide very quickly whether it wishes to create a more effective voice for the literacy field on issues that profoundly affect its future. If it does not, the literacy field will have to live with the consequences for years to come.

Watershed policy issues are not the only imperatives for action, however. Federal and state appropriations processes operate on continuous yearlong cycles. Literacy will probably be level-funded in FY 2003 by the federal government, despite the efforts of literacy advocates to win an increase. As soon as the FY 2003 cycle is finished, the FY 2004 cycle will begin. Advocating increased appropriations is grinding, continuous yearlong work for which no literacy organization now has adequate capacity, but the results are important.

In fact, it is not clear that very many organizations in any field of education have the capacity required to inform the federal appropriations process. A stronger NCL should consider the approach of fields that are more successful in the appropriations arena. Many of these retain the services of firms that specialize in appropriations issues, thereby outsourcing a function that requires very specialized skills and contains economies of scale.

There are many other policy issues that lack adequate input from the literacy field as a whole. These include corrections education, funding levels and directions for research, work-study, and various other forms of financial aid.

Beyond public policy, the greatest challenge facing the field is probably that literacy has become a low visibility, low salience issue for most Americans. This places severe restrictions on how much the literacy field can accomplish. In addition, the literacy field has long suffered from problems of fragmentation. There has always been too little information-sharing and collective deliberation, even at the leadership level. This leads to missed opportunities and needless conflicts at the levels of policy, management, and practice. In addition, the field as a whole has rarely addressed issues of policy, governance, and resources affecting the critically important state role in adult literacy. It may be that progress on many issues can best be made through combining a stronger state focus with greater efforts at the national level.

These chronic problems of the literacy field may not create an imperative for action on the part of NCL to meet 2003 deadlines. But they create an imperative for action soon. Most of the chronic problems are not getting better. Absent strong leadership they are likely to get worse, and they have been millstones around the neck of the literacy field for a long time. NCL was created precisely to address some of these problems. Its members must decide whether they wish to create an organization that can do that job more effectively. Unless and until they do, the chronic problems of the literacy field will probably become more severe – perhaps irreversibly so.

VII. RECOMMENDATION

Leaders of the literacy field have long recognized the need for a comprehensive national organization that would represent the interests and views of the field as a whole – the equivalent of the National Coalitions or Associations representing other important causes. NCL was not established to be such an organization. Consequently, it does not have the organizational infrastructure to perform most national leadership functions that the literacy field requires as effectively as they should be performed. Nor is it realistic to think that NCL can develop the necessary infrastructure without changing the nature of the organization.

This need for change does not mean that NCL is irrelevant, and it does not reflect negatively on anyone involved with the organization. In fact, it is a tribute to its members that NCL has accomplished as much as it has over the years.

But the need for a stronger national leadership organization clearly exists. And that need is very acute at the present time. Watershed issues, particularly in the public policy arena, face the literacy field over the next 18 months. And a more vigorous response to chronic issues is long overdue.

The goals established by NCL's Charter are the goals that a national leadership organization should pursue. By establishing these goals, and by its history of service, NCL is uniquely positioned to fill the national leadership void. The only barriers it must overcome are organizational.

NCL should act promptly to overcome those barriers. Specifically, it should establish the National Coalition for Literacy as an incorporated, tax-exempt entity with at least a small full-time staff, and it should raise the funds necessary to support such an operation. The details of how this should be done and the consequences of doing it are set forth above.

Taking this step would require a short-term infusion of time, energy, and financial resources on the part of at least some of NCL's members. Nevertheless, creating a new and stronger NCL appears to be eminently feasible. The burden of most transition problems can be minimized by hiring an agent to manage the process and by retaining other forms of professional help.

Incorporation, staffing, and all that comes with it are the only ways by which NCL can substantially improve its performance and adequately meet the goals of its Charter.

More importantly, the literacy field needs and deserves to be represented by a National Coalition on a par with the organizations that represent other fields. At present, NCL is the only organization in a position to bring about this result. It should do so as promptly as possible.

There are, of course, risks entailed in this or any other new undertaking. But no organizational decision is, or should be, set in concrete. If NCL members are uncertain about the benefits of this approach, they can consider it a 2-3 year experiment. If the approach proves unsatisfactory, it can be modified.

By far the greater risk is inaction. As presently constituted, NCL simply cannot meet the urgent need for national leadership in the literacy field.

Creating a new and stronger NCL can be done, and it should be done. It is up to the members of NCL whether it will be done. It is a matter of will.

APPENDIX I

Evaluation Study Interviewees

Eunice Askov* – Institute for the Study of Adult Literacy, Penn State University

Peggy Barber – Library Communications Strategies

Anne Boni – The Center for the Book

Miriam Burt* – Center for Applied Linguistics

John Comings* – National Center for the Study of Adult Learning and Literacy

Sherrie Claiborne* – Commission on Adult Basic Education (COABE)

Mary Ann Corley* – National Center for the Study of Adult Language and Literacy

Victoria Cram – Ball, Janick, and Novak

Sharon Darling* – National Center for Family Literacy

Margaret Doughty – Fundraising Consultant

Susan Flaherty – Roha and Flaherty

Susan Foster – Center for the Prevention of Substance Abuse

Edith Gower* – National Alliance of Urban Literacy Coalitions

Christie Gullion – National Institute for Literacy

Alice Johnson – Children's Defense Fund

Irving Katz – National Assembly

Maria Lewis* – Lundy Boggs Center for Community Literacy

Dale Lipschultz* – American Library Association

Noreen Lopez* – Public Broadcasting Service

Lennox McLendon – National Adult Education Professional Development Consortium

Garrett Murphy – National Adult Education Professional Development Consortium

Annabel Newman* – International Reading Association

James Parker – U.S. Department of Education

Roberta Pulaski* – National Council of State Directors of Adult Education

Jon Randall – Federal Strategies

John Segos* – Teachers of English as a Second Language (TESOL)

Frank Shafrock – U.S. Conference of Mayors

Mary Dunn Siedow* – National Association of State Literacy Resource Centers

Kathy Sikes* – Student Coalition for Action in Literacy Education (SCALE)

Christine Smith* – National Center for the Study of Adult Learning and Literacy

Robbin Sorensen* –Executive Management Services, Inc.

Gail Spangenberg – Council for Advancement of Adult Literacy

Carolyn Staley – National Institute for Literacy

Steve Steurer* -- Correctional Education Association

Marsha Tait*– ProLiteracy (formerly Literacy Volunteers of America)

Peter Waite*—ProLiteracy (formerly Laubach Literacy Action)

* NCL voting members as of September 1, 2002

APPENDIX II

II-A Memorandum on Incorporation & Tax Exemption

II-B General Information on Lobbying

II-C Description of Roha and Flaherty Practice

Legal Procedure for Creating a Nonprofit, Tax Exempt Organization in the U.S.

Susan L. Q. Flaherty

This describes the legal procedure required for creation and maintenance of a nonprofit, tax exempt organization under the law of the U.S.

SUMMARY

The steps of the legal procedure required for creation and maintenance of a nonprofit, tax exempt organization may be summarized as follows:

O Choosing an Entity

O Choosing a Situs

O Creating the Entity

O Drafting Bylaws

O Conducting the Organizational Meeting of Board of Directors

O Applying for Exemption from U.S. Federal Income Taxation

O Applying for any State Tax Exemptions

O Applying for a Charitable Solicitation License

O Maintenance Filings

CREATING AN ORGANIZATION IN THE U.S.

Introduction

The legal process involves both federal tax law and state law on corporations, trusts or associations, tax, and charitable solicitation. Only one federal government agency is involved: the Internal Revenue Service. On the state level, there are often three state government agencies involved, namely a corporations commission, a tax department and an entity to regulate charitable solicitation. The process of maintaining an organization

will also be described briefly, as will cost of legal fees for organizing and maintaining a nonprofit organization.

This information is intended for general informational purposes. It may not be used as legal advice or opinion on any specific facts or circumstances. An attorney should be consulted with any specific questions.

Choosing an Entity

The first step in the legal process of creating a nonprofit, tax exempt organization is to choose one of the available legal entities for this purpose, This is a question of state law. Generally, one could choose from among nonprofit corporation, charitable trust, or unincorporated association, However, the laws in most of the states of the U.S. make a nonprofit corporation the most sensible and convenient choice of entity. We have created hundreds of nonprofit organizations in the U.S., and nonprofit corporation has been the vehicle of choice in almost every instance.

Choosing a Situs

The next step in the legal process is to choose in which of the 50 states or the District of Columbia to locate the entity. The choice of situs can depend upon many factors, but among the more important factors are the clarity of and ease of administration under a particular state's nonprofit corporation laws, local tax exemption regime, and charitable solicitation laws, and the level of activity at which a nonprofit, tax exempt organization intends to operate. We have found that New York and California tend to be particularly more burdensome than other states, and we generally discourage organizing under the laws of those states unless there is some particular non-legal or strategic reason for locating in New York or California.

Without any non-legal or strategic reasons that a particular organization may have for locating in a particular jurisdiction, we would state our preferences of location as follows.

The District of Columbia is an attractive jurisdiction. While District tax exemption must be separately applied for, it is worth the trouble, since in contrast to Virginia, the District exempts tax exempt organizations from a very broad range of taxes, including sales taxes, which can save an organization a great deal of money in the long run. Many organizations find it attractive be organized in the nation's capitol.

The state of Virginia statutes are clear and not burdensome. In addition, Virginia automatically recognizes a U.S. federal income tax exemption of a nonprofit corporation without having to apply for recognition in Virginia.

Beyond the District and Maryland, we have no particular preferences. Despite popular belief, Delaware is not particularly advantageous for nonprofit organizations.

Creating an Entity

The next step in the legal process is to actually create a legal entity. Again, this is a question of state law. For purposes of this discussion, we are presuming that a nonprofit corporation would be the vehicle of choice for creating a nonprofit, tax exempt

organization in the U.S. To create such a corporation, we would draft articles of incorporation and then file them with the corporation commission in the situs state. This can be done in as little as a day.

Articles of incorporation are the written instrument by which a nonprofit corporation is created. The articles are usually three to four pages long. Nearly every item in the articles is required by state corporation law or by U.S. federal tax law. The articles state the name and purposes of the corporation, the names and addresses of the initial board of directors, and certain other required information.

Those intended to be board members of the organization would have to review a draft of the articles of incorporation. Once the articles have been put in final form, they are filed along with a modest filing fee with the appropriate state corporation commission. The corporation commission approves the articles by issuing a certificate of incorporation. The corporation commission approval can be obtained on a walk-in basis in some jurisdictions, with approval given in the same day. If we submit them by express mail in circumstances where it is not convenient to walk in, we can often obtain the certificate in a week to 10 days.

Drafting Bylaws

The next step in the legal process is to draft bylaws for the corporation. Bylaws are internal rules and regulations adopted by a corporation for its governance. Bylaws are not filed with any state government (although they must be filed with the U.S. Internal Revenue Service as part of the application for tax exemption). Bylaws are normally a 10 to 20 page document that we can prepare relatively quickly.

Conducting the Organizational Meeting of Board of Directors

As soon as we have a certificate of incorporation, the next step in the legal process is to have an initial organizational meeting of the board of directors of the corporation, either by unanimous written consent or in person or by telephone.

At the organizational meeting, whether by written consent or in person or by telephone, the directors approve the articles, adopt bylaws, authorize counsel to seek federal income tax exemption, state exemption from as many types of taxes as possible, and a charitable solicitation license. The directors must also decide upon the fiscal year and financial institution for the corporation and conduct certain other preliminary business.

Applying for Exemption from U.S. Federal Income Taxation

After the organizational meeting of the board of the corporation, the next step in the legal process is to submit an application for recognition of income tax exemption to the U.S. Internal Revenue Service (IRS). No other part of the federal government of the U.S. has any jurisdiction over the issue of tax exemption and tax deduction.

The application for tax exemption is prepared by completing an IRS form specifically designed for this purpose (Form 1023). The completed form and all attachments, including articles of incorporation and bylaws, normally constitute a 100 page document. The application is designed to solicit information that will enable the IRS to determine that the organization is organized and operated for tax exempt purposes and that its funds will be devoted to such purposes.

Again, in the U.S., recognition of exempt status is centralized in the IRS. IRS makes three determinations: whether the organization is to be recognized as tax exempt under Internal Revenue Code §501, whether the organization is eligible to attract tax deductible contributions under Code §170, and whether the organization is a private foundation or a public charity under Code §509.

"Exemption" refers to the fact that a nonprofit organization may be "exempted" from the payment of U.S. federal income tax, while "deduction" refers to the fact that some, not all, exempt organizations are eligible to receive contributions that may be tax deductible by the donors.

The Code describes organizations that are entitled to tax exemption. The largest group of exempt organizations is described in Code §501(c)(3) as:

"Corporations, and any... fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international sports competition ... or for the prevention of cruelty to children or animals . . ."

Most organizations obtain tax exemption under this section. There are hundreds of thousands of such 501(c)(3) organizations, which also happen to be eligible to attract tax deductible contributions as described below. IRS publishes a cumulative list that attempts to include all of these organizations. (Also, there are other categories of organizations that are exempt (for example Code §501(c)(4) social welfare organizations or Code §501 (c)(6) business leagues).)

Code § 170(c) describes those exempt organizations entitled to attract tax deductible contributions. These include governmental entities, as well as those described in Code §501(c)(3) above. While many organizations would generally be eligible to attract tax deductible contributions, not all exempt organizations may attract tax deductible contributions. (For example, neither a social welfare organization exempt under Code §501(c)(4) nor a business league exempt under Code §501(c)(6) are eligible for tax deductible charitable contributions.)

IRS charges a filing fee in most instances of $500 for processing the application form and often takes five or six months to process the form. However, if the organization files for exemption within 27 months of the date on which it was created, while the application is pending, the organization can conduct its activities without taxation and with the ability to attract deductible contributions because the tax exemption will be retroactive to the date of creation of the corporation.

To bring the U.S. exemption process into sharper focus to foreign readers, we note that in the U.S., only the IRS has any jurisdiction over the recognition of tax exempt status. If an organization is described in a section of the Code recognizing exemption, the IRS has no discretion to deny the exemption. The IRS exercises virtually no discretion with respect to recognizing exemption of an organization. IRS is not permitted to concern itself with whether the organization will duplicate effort of other charitable organizations, whether the organization's effort would be better directed in another area, or whether the organization's effort is in the national interest. In other words, if an organization is described in the Code as exempt, the IRS must grant a tax exemption upon submission of the organization's completed application. In the U.S., once recognized as tax exempt,

charitable organizations function with little interaction with or direct financial support from the American government.

Applying for Any State Tax Exemptions

After obtaining a U.S. federal income tax exemption, the next step in the legal process would be to obtain any necessary tax exemptions at the state level, or even the local level where applicable (such as exemption from sales taxes or real property taxes). As noted above, some jurisdictions, such as the District of Columbia, require a separate application very much along the lines of that required by IRS. State level processing can take some time. For example, the District of Columbia often takes six months to process an application for exemption from local income taxes. But note that the District exempts organizations from a broad range of taxes, including sales taxes. Other states automatically recognize exemption. For example, Virginia will automatically recognize exemption from Virginia income taxation upon granting of exemption from U.S. federal income taxation.

Applying for a Charitable Solicitation License

After obtaining exemption from U.S. federal income taxation, and state taxation where required, most jurisdictions require an application for a charitable solicitation license. The requirements of charitable solicitation laws vary widely from state to state. Generally, the licensing process is designed to make certain that the organization will comply with laws regulating charitable solicitation and use of charitable funds. Once an organization has a license, it is free to go about fundraising from any source, whether individuals, corporations, foundations, or government. Within certain limits, tax exempt organizations may also raise funds by engaging in unrelated business activities.

Maintaining the Corporation

No discussion of the legal process would be complete without mentioning the legal steps necessary to maintain the organization.

To comply with corporation laws in the state where it is organized, the board of directors of the organization should meet at least annually. In addition, most jurisdictions require the filing of an annual or biannual report with the corporations commission to keep the state up to date on the identity of the directors of the corporation and where the corporation's offices are located. There is a modest filing fee for annual reports.

To comply with federal tax law, once exemption is recognized by IRS, if the organization has more than $25,000 in annual revenues, the IRS requires the filing of an annual return of financial information on a form specifically designed for that purpose (Form 990). This form is normally prepared by a professional accountant. Some organizations such as churches or organizations with less than $25,000 in annual receipts are not required to report at all.

In addition, at the end of the four year advance ruling period for public charity status purposes, an organization must submit on an IRD form prescribed for that purpose (Form 8734) an analysis of its financial information to conclusively demonstrate that it is indeed a public charity.

From time to time the IRS audits nonprofit organizations to make certain that they are being operated for exempt purposes. The percentage of tax exempt organizations that are subjected to IRS audit is extremely low.

For tax purposes, some local jurisdictions also require annual reporting of information like that the IRS requires. Many of these jurisdictions accept a photocopy of the IRS annual return of financial information. In addition, in certain circumstances, exempt organizations must make publicly available a copy of their organizational documents and financial information.

Charitable solicitation licenses are renewable annually as well, again with a modest filing fee.

Costs of the Legal Process

Legal fees for the process of forming a nonprofit, tax exempt organization normally run from $2,500 to $5,000 but may run to $10,000 where there are non-routine questions in a given situation. An initial retainer of $2,000 is required before work begins. The retainer is applied towards word done on an organization's behalf. Annual legal fees to assist with basic annual maintenance just to continue the existence of the organization as described above are usually limited to the cost of a several hours time.

CONCLUSION

The process of creating an organization and obtaining various tax exemptions and related matters involves a series of steps that involve both federal and state law and the IRS and various state agencies. Based upon the fact that there are now more than a million exempt organizations in the U.S., it is fair to say that the process is a workable and accessible process.

November 2001 edition

MEMORANDUM

November 20, 2001

TO:

FROM: **SUSAN L. Q. FLAHERTY, ROHA & FLAHERTY**

Re: **GENERAL INFORMATION ON LOBBYING**

Lobbying--Tax Rules

It is clear that 501(c)(3) organizations are permitted to engage in lobbying, within certain limits. However, some organizations choose to avoid lobbying activities because they fear that lobbying may have an adverse impact on the credibility of or nonpartisan character of the organization.

This memorandum reviews the legal definition of lobbying so that you understand what constitutes lobbying for tax purposes, so that you could avoid lobbying if you chose to do so, or if you engaged in it, would do so only within the rather generous prescribed limits, which are also discussed herein.

Activities that are NOT Lobbying

It may be easier to first consider the sorts of activities that do not constitute lobbying. The following types of activity are among those exempt from the definition of lobbying:

- educational activities such as nonpartisan analysis and publication of the results to the public; the sponsorship of forums, lectures and debates at which speakers take controversial positions is permissible, but organizations must carefully maintain a nonpartisan stance and present reasoned analysis and a full and fair exposition of all the facts;

- contacts with the executive branch or independent regulatory agency; however, pressing the executive branch to support or oppose legislation may constitute lobbying in some circumstances. But organizations my freely approach executive and administrative agency personnel on issues pending before them for decision where

the matter may be dealt with by executive or administrative orders or decision, instead of by legislation;

- making available results of nonpartisan study or analysis, study or research; and

- providing technical advice or assistance to a governmental body or to a committee of a legislature or other subdivision of same in response to a written request by such body.

Example. A conference might be structured as a non-lobbying activity where the audience includes among others members of Congress from both parties, and the educational purposes of the conference are announced, along with an announcement that no specific legislation is to be discussed as part of the public sessions of the conference and that participants are asked to refrain from raising such issues and stick to the educational program.

Exceptions to the lobbying rules--and thus activities that need not be counted towards the lobbying ceiling amount--involve limiting the activity to presentation of nonpartisan research, avoiding discussion of specific legislation, providing technical advice or assistance at the written request of a member of Congress, limiting efforts to the executive branch on non-legislative matters, or appearing in a personal capacity rather than in a role as an agent of an organization. Thus organizations certainly can engage in any amount of such educational, nonlobbying activities.

Activities that Constitute Lobbying

As you read this, you must keep in mind that you must go through two levels of analysis. The first level of analysis is that you must understand what activities constitute lobbying and whether you are engaging in lobbying for tax purposes. The second level of analysis is to measure whether or not these lobbying activities in which you are engaging are below the applicable limits (e.g., below the lobbying ceiling amounts), and thus, are not "substantial", and thus would not pose any threat to an organization's 501(c)(3) status.

Lobbying activities take many forms. Volumes have been written on this subject. It is not possible to discuss here all of the forms these activities might take. Suffice it to say for purposes of this discussion that lobbying activities for tax purposes include but are not limited to activities such as:

- conferences and correspondence with legislators and their staffs for the purpose of proposing, supporting, or opposing legislation;[1]

- presentation of testimony at hearings held by legislative committees;

[1] See Treas. Reg. §§1.501(c)(3)-1(c)(3)(ii), 56.4911-2(b)(1)(ii) and -2(d)(1)(ii).

- publication of documents advocating specific legislative action;
- correspondence and conferences with legislators and their staffs; and
- appeals to the general public by mass media or otherwise to contact legislators (so-called indirect or "grass roots" lobbying) regarding legislation.

It is irrelevant whether the legislation advocated would advance the charitable purposes of the organization.

Example. If you call a conference to which you invite members of Congress and their staffs and it is your intention to discuss at that conference specific legislative proposals or legislation, it would be difficult to characterize that conference as anything besides lobbying, and the costs of that activity would count towards your permitted lobbying ceiling amount (discussed below). This type of lobbying activity is certainly permissible, you simply have to count it towards the lobbying ceiling amount.

There are also rules that concern the situation where expenses incurred for non-lobbying communications can subsequently be characterized as lobbying expenditures where the materials are later used in a lobbying effort within six months of their creation.[2]

These rules provide for reasonable allocation between communications that have lobbying and a bona fide non lobbying purpose.

Example. Organization officials meet with coalition partners to plan a legislative strategy. This is a permissible activity, but again, it must be counted towards the lobbying ceiling amount.

If you plan to engage in activities such as the foregoing Examples on a regular basis, our advice is to allow us to assist you to complete the relatively simple IRS form for making the lobbying election. Our further advice is to have your accountants review your accounting practices to make sure that you have fund accounting systems in place that would allow you to track and keep a log of direct and indirect costs of your lobbying activities, for example cost of staff time devoted to preparation, and costs for such things as photocopying or printing, publicity, transportation to and from the site, and any and all other expenses for the activity. The fund accounting system must also indicate whether the lobbying expenditures were for direct lobbying, or for indirect or grass roots lobbying. Then you must monitor these amounts to make certain that you remain within the lobbying ceiling amounts.

If the activity does not fit squarely within an exception to the lobbying rules, then you need

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[2] Treas. Reg. §56.4911-2(b)(2)(v).

to monitor that activity and all such activities to see whether it rises to a level that might be considered "substantial" under either of the tests described below.

Permissible Limits of Lobbying

As indicated at the outset, 501(c)(3) organizations are permitted to engage in lobbying, within certain limits. These limits come from Internal Revenue Code ("IRC") §501(c)(3), which provides that in order to qualify or continue to qualify as a 501(c)(3) organization (and thus to enjoy the most tax-favored charitable status), "no substantial part of the activities" of the organization may constitute "carrying on propaganda, or otherwise attempting to influence legislation".

There has been considerable uncertainty over the meaning of "no substantial part". Whether lobbying is "substantial" is a question of fact, based on all facts and circumstances. To give you a sense of the uncertainty over the meaning of "substantial", consider the following.

One approach has been to attempt to measure substantiality in this context by determining what percentage of an organization's spending on an annual basis is devoted to efforts to "influence legislation". It has been suggested that perhaps as little as five percent of spending may be "substantial" in this context.

Another approach was to consider activities more important than the money spent, and thus the amount of time and effort spent on influencing legislation was reviewed. Whether or not the effort was successful was also weighed in.

In short, under 501(c)(3), initially there was no clear guidance on the meaning of "no substantial part".

Lobbying Ceiling Amount under the Elective Rules

To remedy this confusion, Congress enacted IRC §501(h), which is often referred to as the "lobbying election", where an organization may elect to be governed by the following generous limitations on spending on lobbying, and in so doing, enjoy certainty that "no substantial part" of its activities constitute lobbying.

The basic permitted annual level of expenditures for direct lobbying--or "lobbying ceiling amount"--is determined by using a sliding scale percentage of the organization's exempt purpose expenditures, with:

(a) 20 percent of the first $500,000 of an organization's expenditures for an exempt purpose, plus 15 percent of the next $500,000; and

(b) 10 percent of the next $500,000, and five percent of any remaining expenditures.

However, the total amount spent in any one year for legislative activities may not exceed $1

million.[3]

A separate limitation of 25 percent of the foregoing amounts is imposed on attempts to influence the general public on legislative issues. This is the so-called indirect or "grass roots" lobbying limitation, which is obviously lower than the direct lobbying limitation described above.

Here is an example of how the distinction between direct lobbying and indirect/grassroots lobbying limitations may come into play. If an organization does decide to lobby, and further, to post content on its Web site that takes a position on specific legislation and encourages readers to take action, that posting in all likelihood will constitute at least direct lobbying and be subject to the limits on direct lobbying. If the lobbying information is posted on a part of the organization's Web site accessible only to the non-voting class of professional members who are affiliated with voting member institutions, the more generous limits direct lobbying limitations apply to these communications. However, if the lobbying information is posted on a part of the organization's Web site accessible to the public, the lower less generous indirect/grassroots limitation applies.

Either way, it strikes us that the limits are so generous, that given the size of many organization's budgets, it would appear unlikely that most organizations would ever reach the limits.

As indicated above, when organizations make an affirmative decision to engage in lobbying, we advise them to make the lobbying election. We normally prepare the IRS form necessary to make the election. We also advise that one must have in place sound fund accounting practices that allow for the tracking of lobbying expenditures in order to comply with the limits.

If your organization's activities are not within the exceptions to the tax law lobbying rules as described or you are uncertain about whether they fit within, then perhaps you need to tell us more about your activities or proposed activities so that we can determine whether any other exemption may be available or if in fact any activity constitutes lobbying, and if so, how to proceed for tax law purposes.

Lobbying--Non-Tax Rules

Lobbying Disclosure Act of 1995

The Lobbying Disclosure Act of 1995 was a revision of part of federal non-tax lobbying law. This law concerns registration of lobbyists with the Secretary of the Senate and the Clerk of the House. It is a "sunshine in government" type of law, where in some circumstances, lobbyists must register and say how much they are being paid and on what issues they are working.

Whether or not an organization would have to register depends upon all the facts and circumstances concerning its activities. We will discuss below the portions of the law that appear

[3] See Treasury Regulations §§1.501(h)-3(c)(2), 56.4911-1(c)(1), 56.4911-1(c)(1).

most relevant to making a determination as to whether an organization would have to register under this law. Please note that this law leaves intact the tax law lobbying rule.

Please also note that this law does not prohibit lobbying. This law merely requires registration in certain circumstances in order to make a public disclosure of the activity. This is similar to the tax rules, which do not prohibit lobbying, but limit spending of charitable funds on lobbying. But there are very broad exceptions to registration under this law.

The definition of lobbying is broader under this law than under the tax rules. However, the exceptions to the definition are quite broad as well, as discussed below. Most importantly, this law includes a variety of contacts not only with the legislative branch, but also with the executive branch. (In contrast, the tax law excludes from its definition of lobbying contacts with the executive branch.)

Under this law, lobbying that may require registration includes "lobbying contacts" and "lobbying activities".

Under §3(8)(A) of the law, "lobbying contact" means "any oral or written communication to a covered executive branch official or a covered legislative branch official . . . with regard to" such things as "formulation, modification, or adoption of Federal legislation (including legislative proposals)" or even "formulation, modification, or adoption of a Federal . . . policy".

Under §3(7) of the law, "lobbying activities" means "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others."

If an organization engages in these activities before the legislative or executive branch, registration may be required. So you can see that this law is designed to capture a broader range of activity than in the past.

However, there are exceptions to the registration requirement, and the exceptions are quite broad, and they are somewhat similar to some of the tax law exceptions to the definition of lobbying. For example, under §3(8)(B)(iii) of the act, "lobbying contact" as defined in the act "does not include a communication that is . . . made in a speech, article, publication or other material that is distributed and made available to the public".

Another important exception in §3(8)(B)(vii) is that "lobbying contact" does not include "testimony given before a committee, subcommittee, task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force".

Yet another important exception in §3(8)(B)(viii) is that "lobbying contact" does not include "information provided in writing in response to an oral or written request by a covered executive

branch official or a covered legislative branch official for specific information".

Questions may arise as to whether individuals may be required to register under this law as lobbyists. Under this law in §3(10), a "lobbyist" is "any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period". The organization would be the "client" here, according to §3(2) of this law. Thus, if you spend less than 20 percent of your time in lobbying activities as defined under this law, you personally would be excepted from the registration requirement.

There are still further exceptions to the law that may be applicable. There are exemptions from registration in §4(3)(a)(ii) for organizations whose employees engage in lobbying where the expenses for lobbying activities "do not exceed or are not expected to exceed $20,000 . . . in the semi-annual period . . . during which the registration would be made". Note, the $20,000 is semi-annual, so this could be $40,000 per annum.

Finally, if you have heard that organizations receiving any federal money are prohibited from lobbying, you need to be aware that this law does not go quite that far. What the law really states on this topic does not apply to 501(c)(3) organizations at all. The law states that a 501(c)(4) social welfare organization that engages in lobbying activities shall not be eligible for receipt of Federal funds constituting an award, grant contract, etc.

If your organization's activities are within one of the broad exceptions discussed above, then you may not need to be concerned with this particular non-tax lobbying disclosure law.

If your organization's activities are not within the exceptions to the non-tax law or you are uncertain about whether they fit within the exceptions, then perhaps you need to tell us more about your activities so that we can determine whether any other exemption may be available or if in fact registration would be required.

Conclusion

This memorandum contains only general information and is not intended to nor does it constitute legal advice to any particular person, organization or client. Please contact us for specific advice regarding your organization's activities and lobbying.

Appendix II-C

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DESCRIPTION OF OUR PRACTICE

We restrict our law practice for the most part to two fields: **Corporate and Tax Counsel to Nonprofit Organizations**, and **Tax Counsel to Individual and Corporate Philanthropists**.

Corporate and Tax Counsel to Nonprofit Organizations

We represent charitable and other nonprofit organizations. Our operating nonprofit clients include universities and related foundations, religious institutes, think tank research institutes for environment, international affairs, economic reform, agriculture, and other policy making areas, professional societies, educational associations, health care organizations. We also represent a variety of grant making organizations, such as American and Canadian university-related foundations and family foundations.

In the last decade, we have represented clients in connection with the formation of over 100 new charitable and other nonprofit organizations. We assist clients in determining whether a business or nonprofit form will most effectively achieve their goals. If the nonprofit form is appropriate, we consider whether the organization will qualify as a charitable organization. Within the range of available options, we assist clients in selecting the type of public charity or private foundation that would be most suitable. We prepare and submit necessary applications for tax exemption and charitable solicitation to governmental agencies. We also form private and other grant making foundations and prepare grant administration forms and procedures for them. Finally, we help clients develop the equivalent of a charitable business plan, and we also provide written guidance to our clients for their future operations.

In addition to our work with new organizations, we serve as general counsel to nonprofit organizations that have been in existence for some time. We respond to issues that arise during the day-to-day operations of our clients. Such issues include questions about the duties of the board of directors or the rights of members or other such matters of corporate governance. We may be asked to negotiate and draft agreements, to resolve problems posed by reorganizations or relocations, or to develop structures for endowment funds and subsidiary organizations. We counsel our clients on compliance with federal and state rules regulating the charitable sector, including rules on charitable solicitations, lobbying and commercial activities. We offer preventative advice and legal audits so that our clients may avoid troublesome legal issues in the future. Nonprofit organizations retain our firm to conduct legal audits and to perform due diligence investigations where improprieties may be suspected, as well as for advice in strategic planning, and for advocacy before Congress, the Internal Revenue Service, and other federal and local governmental agencies. We can alert clients to legal developments, particularly those that may be useful to them in expanding or improving their programming.

A more detailed explanation of some of the areas in which we provide advice is as follows:

- **Board Governance**

  Articles of incorporation, foreign corporation registration, annual corporate reporting to maintain corporate status, bylaws, board agendas, minutes, policy and procedure manuals, conflict of interests, fiduciary duties, and board, officer and key employee training.

- **Taxation Issues**

  Obtaining and maintaining income, sales and personal property exempt status and public charity status, representation before IRS and state tax authorities to request rulings and to manage audits, royalty and endorsement programs, unrelated business income tax planning, lobbying and private inurement issues, use of subsidiaries and foundations, issues on Forms 990 and 990-T and financial statements, private foundation issues.

- **Contracts**

  Key employee contracts, personnel manuals, leases, publication contracts, convention and meeting space contracts and related contracts, contract negotiation, requests for proposals, grants.

- **Fiduciary Obligations and Insurance Advice**

  Directors and officers fiduciary obligations, review of directors and officers liability insurance and general umbrella liability for personal injury, bonding of treasurers, applications for insurance, claims advice, employee benefits, representation of medical professional societies before insurers on coverage issues.

- **Charitable Giving**

  Charitable solicitation licensing and regulatory advice, general information on tax aspects of charitable giving for potential donors to share with their own counsel, including international tax issues, planned giving, charitable remainder trusts, deeds of gift.

- **Legal Audits**

  Review of annual federal and state filings, charitable solicitation licensing, qualification to do business, employment related tax withholding, financial statements and fund raising, relocation and reorganization advice.

- **Analysis and Strategic Planning**

  Assistance in development of a strategic plan, legal audits, counseling during transitions, conflict resolution, interface with other organizations, legislative drafting.

For many of our exempt organization clients, when the organizations have developed to the point where they have a need for this additional group of services, we also provide advice in executive compensation and personnel, government relations, real estate leasing and acquisitions, and intellectual property and proprietary rights and other areas.

We also act as general counsel to grant makers, including both private foundations and public charities. We advise on general legal matters as well as on specialized subjects such as grant making procedures for foreign and domestic grantees, lawyer equivalency letters, and compliance with private foundation and supporting foundation rules.

We also serve as special counsel on select matters to nonprofit organizations. Also, law and accounting firms and consultants to charitable organizations seek our advice as special counsel on program, tax, financial and development issues.

Tax Counsel to Philanthropists

We also counsel individual and corporate philanthropists. For individuals, we prepare charitable remainder trusts and other deferred or planned giving arrangements, deeds of gift, and the like, and we advise on charitable estate planning.

We also provide a full range of income, estate and gift tax advice to individual philanthropists, including transaction planning, representation before tax authorities, and complex returns.

We also provide probate and trust administration services in charitable estates.

For corporations, domestic and foreign, we provide advice on charitable giving strategies and transaction planning.

Our Attorneys

Our firm's professional activities do not end with the representation of our clients. We write articles in professional journals and speak on topics of interest to the both our nonprofit and individual clients. We volunteer with numerous charities, bar associations, including the American Bar Association Exempt Organizations Committee, and governmental entities in the Washington area.

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